

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEBORAH A. BRODIE,

Plaintiff,

v.

NORTHWEST TRUSTEE
SERVICES, INC., et al.,

Defendants.

NO: 12-CV-0469-TOR

ORDER OF DISMISSAL WITHOUT
PREJUDICE

BACKGROUND

On July 13, 2012, Defendant JPMorgan Chase Bank, NA removed this case from state court to this Court. ECF No. 1. Ultimately, after motion practice and several amended complaints, this Court dismissed Plaintiff's causes of action against JPMorgan Chase and Northwest Trustee Services. ECF No. 57. An Amended Complaint filed on October 10, 2012 (ECF No. 35), named the Federal Deposit Insurance Corporation, Washington Mutual Bank, F.A., and John Does 1-25 as defendants, but to date the file does not show they have been served. The

1 Court issued an Order to Show Cause dated February 4, 2013, requiring Plaintiff to
2 show cause by February 14, 2013, why her claims against Defendants Federal
3 Deposit Insurance Corporation, Washington Mutual Bank, F.A., and John Does 1-
4 25 should not be dismissed for failure to prosecute. ECF No. 65. Plaintiff failed to
5 respond to the Court's Order.

6 DISCUSSION

7 It is well established that district courts have the authority to dismiss for
8 failure to prosecute or to comply with court orders. *See* Fed. R. Civ. P. 41(b);
9 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In determining whether
10 to dismiss a case for failure to comply with a court order or failure to prosecute, the
11 district court must weigh five factors including: "(1) the public's interest in
12 expeditious resolution of litigation, (2) the court's need to manage its docket; (3)
13 the risk of prejudice to the defendants; (4) the public policy favoring disposition of
14 cases on their merits; and (5) the availability of less drastic alternatives." *Ferdik*,
15 963 F.2d at 1260-61; *see also Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
16 1986).

17 The Ninth Circuit has held that "[t]he public's interest in expeditious
18 resolution of litigation always favors dismissal." *Yourish v. California Amplifier*,
19 191 F.3d 983, 990 (9th Cir. 1999). Similarly, "[i]t is incumbent upon us to
20 preserve the district courts' power to manage their docket without being subject to

1 the endless vexatious noncompliance of litigants” *Ferdik*, 963 F.2d at 1261. In
2 the present action, the first two factors weigh in favor of dismissal. Plaintiff has
3 not filed a response to the Court’s Order to show cause. This lack of response by
4 Plaintiff clearly suggests that Plaintiff does not intend to litigate this case
5 diligently, and ongoing delay would hinder the Court’s ability to manage its
6 docket.

7 The third factor for the Court to weigh is the risk of prejudice to the
8 Defendants. The Court must examine whether Plaintiff’s actions impaired the
9 Defendants’ ability to go to trial or threatened to interfere with the rightful decision
10 of the case. *Malone v. U.S. Postal Service*, 833 F.2d 128, 131 (9th Cir. 1987).
11 “Limited delays and the prejudice to defendant from the pendency of a lawsuit are
12 realities of the system that have to be accepted, provided the prejudice is not
13 compounded by ‘unreasonable’ delays.” *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th
14 Cir. 1984). The Court must also weigh whether prejudice is sufficient to support
15 dismissal with consideration of the strength of Plaintiff’s excuse for default. *See*
16 *Malone*, 833 F.2d at 131. In the instant case Plaintiff has offered no excuse for her
17 default. While this case has only been pending in this Court and the state court
18 since June 18, 2012, the complete lack of response by Plaintiff is an unreasonable
19 delay. If Plaintiff has indeed not served the Defendants timely, this factor weighs
20 heavily in favor of dismissal.

1 The fourth factor for the Court to consider is the public policy favoring
2 disposition of cases on their merits. The Ninth Circuit has repeatedly found that
3 public policy favors disposition of cases on the merits, therefore, this factor weighs
4 against dismissal. *See Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002);
5 *Malone*, 833 F.2d at 133 n.2.

6 The fifth factor for the Court to consider is the availability of less drastic
7 alternatives. *See U.S. v. Nat'l Med. Enter.*, 792 F.2d 906, 913 (9th Cir. 1986)(court
8 must first consider the impact of the sanction and the adequacy of less drastic
9 sanctions). “[C]ase law suggests that warning a plaintiff that failure to obey a
10 court order will result in dismissal can suffice to meet the “consideration of
11 alternatives” requirement.” *Malone*, 833 F.2d at 132-33. This factor weighs in
12 favor of dismissal. Plaintiff was clearly instructed that she must show cause as to
13 why her case should not be dismissed. She was given sufficient time within which
14 to comply. Plaintiff’s complete lack of response to Court’s Order to show cause
15 demonstrates an unwillingness to participate in prosecuting this action.

16 After carefully weighing each of the factors, the Court finds that four out of
17 the five weigh in favor of dismissal. Accordingly, the Court orders dismissal of
18 this case without prejudice.

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1 Accordingly, **IT IS HEREBY ORDERED:**

- 2 1. All pending and remaining claims and causes of action in this matter are
3 **DISMISSED** without prejudice.

4 The District Court Executive is hereby directed to enter this Order and
5 furnish copies to counsel, and **CLOSE** the file.

6 **DATED** February 15, 2013.



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Thomas O. Rice
THOMAS O. RICE
United States District Judge